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Message Text

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70
ACTION L-03

INFO OCT-01 ARA-06 EUR-12 IO-13 ISO-00 EB-07 TRSE-00

COME-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 NSCE-00 SSO-00

USIE-00 INRE-00 AID-05 STR-04 OPIC-03 JUSE-00 AF-08

EA-07 NEA-10 /116 W
---------- 120070
O R 031916Z AUG 76
FM USMISSION GENEVA
TO "SECSTATE WASHDC IMMEDIATE 1663
INFO USMISSION USUN NEW YORK
USMISSION USEC BRUSSELS
USMISSION OECD PARIS
AMEMBASSY BRASILIA IMMEDIATE

C O N F I D E N T I A L GENEVA 6273

BRASILIA FOR ASSISTANT SECRETARY LEWIS

DEPARTMENT FOR IO (MOREY), EB (GREENWALD), EB/OFD/OIA
(CONSTABLE) AND L)LEIGH)

E.O. 11652: GDS
TAGS: ECOSOC, EGEN, EFIN
SUBJ: 61ST ECOSOC: ITEM 13 - US PROPOSAL ON ILLICIT PAYMENTS

REF: A. GENEVA 6219; B. BRASILIA 6784
C. STATE 190992

1. TRANSMITTED BELOW IS THE FINAL TEXT OF THE RESOLUTION
ON ILLICIT PAYMENTS AS NEGOTIATED IN THE CONTACT GROUP
MEETING ON THE MORNING OF AUGUST 3. THIS TEXT (L/590) WAS
DISTRIBUTED IN ENGLISH AT THE MEETING OF THE ECONOMIC
COMMITTEE THE SAME AFTERNOON. THE ECONOMIC COMMITTEE IS SCHEDULED TO
MEET AT 10:30 A.M. (GENEVA
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TIME) ON AUGUST 4 TO TAKE FINAL ACTION. THERE IS AN OUTSIDE

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CHANCE THAT THE SOVIET BLOC MAY TRY TO INVOKE THE
24-HOUR RULE AT THAT TIME; HOWEVER, THE G-77 ARE WITH
US IN PUSHING FOR IMMEDIATE APPROVAL. FOLLOWING THE
ECONOMIC COMMITTEE'S APPROVAL, THE TEXT WILL GO TO
PLENARY FOR FINAL ECOSOC APPROVAL (NORMALLY PRO FORMA).

2. IN THE CONTACT GROUP MEETING, USDEL SOUGHT RETENTION
OF THE BRACKETED LANGUAGE IN PARAGRAPH ONE WHICH WOULD
CALL UPON THE WORKING GROUP TO PREPARE DRAFT ARTICLES
OF AN INTERNATIONAL AGREEMENT. THIS WAS FORCEFULLY
OPPOSED BY BRAZIL ON BEHALF OF THE G-77. IN RETURN FOR
OUR AGREEMENT TO DROP THIS LANGUAGE, WE OBTAINED G-77
AGREEMENT TO DROP THE BRACKETED WORD "POSSIBLE" IN
OPERATIVE PARAGRAPH 1(A) AND TO ADD THE FOLLOWING AT THE END
OF OP PARA 4: "THE REPORT OF THE WORKING GROUP SHOULD BE SUBMITTED
IN A FORM THAT WILL ENABLE THE
COUNCIL, IF IT SO DECIDES, TO TRANSMIT ITS CONCRETE
RECOMMENDATION OR RECOMMENDATIONS TO THE GENERAL ASSEMBLY
FOR FINAL ACTION." (COMMENT: TO OUR SURPRISE OVER-
NIGHT CONTACTS WITH BRAZIL REPS AND EARLY MORNING MEETING
WITH AMBASSADOR DA COSTA, BRAZILIAN PERM REP TO THE UN,
CLEARED THE WAY FOR THIS RESULT WHICH INCLUDES MORE THAN
WE HAD THOUGHT POSSIBLE.)

3. ALSO IN CONTACT GROUP MEETING WE JOINED WITH FRG,
UK, AND CANADA IN OPPOSING THE PREAMBULAR PARAGRAPH
REFERENCE TO THE PRINCIPLE OF PERMANENT SOVEREIGNTY.
AFTER CONSIDERABLE DISCUSSION, WE WITH THE CONCURRENCE
OF OUR WEO COLLEAGUES, ACCEPTED THE INCLUSION IN
PREAMBULAR PARAGRAPH ONE OF THE LANGUAGE OF OPERATIVE
PARAGRAPH 2 OF GENERAL ASSEMBLY RES 3514 (APPROVED
BY CONSENSUS) IN LIEU OF ANY REFERENCE TO PERMANENT
SOVEREIGNTY.

4. IN THE CONTACT GROUP, IT WAS CLEARLY STATED THAT
THE PRESENT MANDATE OF THE WORKING GROUP WOULD NOT
REPEAT NOT PRECLUDE IT FROM MOVING ON TO THE DRAFTING
OF ARTICLES OF A POSSIBLE INTERNATIONAL AGREEMENT. HOW-
EVER, WE DID AGREE NOT TO MAKE ANY RESERVATIONS WITH
REGARD TO THE TEXT ITSELF IN THE ECONOMIC COMMITTEE IN THE
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PLENARY.

5. IN SO FAR AS THIS TEXT FALLS CLEARLY WITHIN OUR
INSTRUCTIONS CONTAINED REFTEL C. USDEL HAS SAID THAT WE
WOULD AGREE TO A CONSENSUS APPROVAL OF THIS TEXT. WE
VERY MUCH APPRECIATE THE SUPPORT AND ASSISTANCE OF
THE DEPARTMENT AND OF INTERESTED POSTS, PARTICULARLY IN
THESE FAST-MOVING CLOSING DAYS.

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6. TEXT FOLLOWS: QUOTE

TRANSNATIONAL CORPORATIONS
DRAFT RESOLUTION SUBMITTED BY THE CHAIRMAN
CORRUPT PRACTICES, PARTICULARLY ILLICIT PAYMENTS, IN INTERNATIONAL
COMMERCIAL TRANSACTIONS

THE ECONOMIC AND SOCIAL COUNCIL,
RECALLING GENERAL ASSEMBLY RESOLUTION 3514 (XXX) OF 15 DECEMBER
1975, WHICH, INTER ALIA, (A) CONDEMNED ALL CORRUPT PRACTICES, INCLUDING
BRIBERY,
BY TRANSNATIONAL AND OTHER CORPORATIONS, THEIR INTERMEDIARIES
AND OTHERS INVOLVED, IN VIOLATION OF THE LAWS AND REGULATIONS
OF THE HOST COUNTRIES; (B) REAFFIRMED THE RIGHT OF ANY STATE
TO ADOPT LEGISLATION AND TO INVESTIGATE AND TAKE APPROPRIATE
LEGAL ACTION, IN ACCORDANCE WITH ITS NATIONAL LAWS AND REGULATIONS,
AGAINST TRANSNATIONAL AND OTHER CORPORATIONS, THEIR INTER-
MEDIARIES AND OTHERS INVOLVED FOR SUCH CORRUPT PRACTICES; AND
(C) CALLED UPON ALL GOVERNMENTS TO EXCHANGE INFORMATION ANDUPON
HOME GOVERNMENTS TO CO-OPERATE WITH GOVERNMENTS OF THE HOST COUNTRIES
TO PREVENT CORRUPT PRACTICES, INCLUDING BRIBERY,
NOTING THE DECISION OF THE COMMISSION ON TRANSNATIONAL CORPORA-
TIONS AT ITS SECOND SESSION AS CONTAINED IN PARAGRAPH 37 OF
ITS REPORT (E/5782),

1. DECIDES:
(A) TO ESTABLISH AN AD HOC INTERGOVERNMENTAL WORKING GROUP TO
CONDUCT AN EXAMINATION OF THE PROBLEM
OF CORRUPT PRACTICES, IN PARTICULAR BRIBERY, IN INTERNATIONAL
COMMERCIAL TRANSACTIONS BY TRANSNATIONAL AND OTHER CORPORATIONS,
THEIR INTERMEDIARIES AND OTHERS INVOLVED, TO ELABORATE IN DETAIL
THE SCOPE AND CONTENTS OF AN INTERNATIONAL AGREEMENT TO PREVENT
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AND ELIMINATE ILLICIT PAYMENTS, IN WHATEVER FORM,
IN CONNEXION WITH INTERNATIONAL COMMERCIAL TRANSACTIONS AS
DEFINED BY THE WORKING GROUP, AND TO REPORT TO THE ECONOMIC AND
SOCIAL COUNCIL AT ITS SIXTY-THIRD SESSION, ALONG WITH SUCH OTHER
RELEVANT PROPOSALS AND OPTIONS AS THE GROUP MAY DECIDE;
(B) THAT THE AD HOC INTERGOVERNMENTAL WORKING GROUP SHALL BE
COMPOSED OF 18 MEMBERS SELECTED BY THE COUNCIL ON THE BASIS OF
EQUITABLE GEOGRAPHICAL DISTRIBUTION;
(C) THAT THE AD HOC INTERGOVERNMENTAL WORKING GROUP SHALL MEET
IN 1976 AND AS NECESSARY IN 1977, THE SESSIONS TO BE OF SUFFICIENT
DURATION TO PERMIT COMPLETION OF ITS TASK;

2. REQUESTS THE UNITED NATIONS AGENCIES AND BODIES, ESPECIALLY
UNCITRAL AND THE INFORMATION AND RESEARCH CENTRE
ON TRANSNATIONAL CORPORATIONS, TO RENDER SUCH ASSISTANCE TO THE

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ADHOC INTERGOVERNMENTAL WORKING GROUP AS IT MAY REQUEST;

3. REAFFIRMS THAT THE FORMULATION OF A CODE OF CONDUCT BY THE COMMISSION ON TRANSNATIONAL CORPORATIONS SHOULD BE GIVEN THE HIGHEST PRIORITY AND THAT CONSIDERATION OF AN AACTION BY THE COUNCIL IN THE MATTER OF CORRUPT PRACTICES, PARTICULARLY, ILLICIT PAYMENTS, SHALL IN NO WAY INTERFERE WITH OR DELAY THAT PRIORITY;

4. DECIDES FURTHER THAT THE AD HOC INTERGOVERNMENTAL WORKING GROUP SHOULD SUBMIT A REPORT TO THE COUNCIL AT ITS SIXTY-THIRD SESSION CONTAINING THE RESULTS OF ITS WORK PURSUANT TO PARAGRAPH 1(A) ABOVE; THE REPORT OF THE WORKING GROUP SHOULD BE SUBMITTED IN A FORM THAT WILL ENABLE THE COUNCIL, IF IT SO DECIDES, TO TRANSMIT ITS CONCRETE RECOMMENDATION OR RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR FINAL ACTION. END QUOTE.CATTO

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: POLICIES, INTERNATIONAL LAW, BRIBERY, RESOLUTIONS, MULTINATIONAL CORPORATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 03 AUG 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976GENEVA06273
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760299-0321
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760893/aaaaddwj.tel
Line Count: 184
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 GENEVA 6219, 76 BRASILIA 6784, 76 STATE 190992
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 31 MAR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <31 MAR 2004 by SmithRJ>; APPROVED <13 AUG 2004 by ShawDG>
Review Markings:

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04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: 61ST ECOSOC: ITEM 13 - US PROPOSAL ON ILLICIT PAYMENTS
TAGS: EGEN, EFIN, US, ECOSOC
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006